



Family Courts Amendment Rules (No 4) 2014

Jerry Mateparae, Governor-General

Order in Council

At Wellington this 26th day of May 2014

Present:

His Excellency the Governor-General in Council

Pursuant to section 16A of the Family Courts Act 1980, His Excellency the Governor-General, acting on the advice and with the consent of the Executive Council, makes the following rules.

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Schedule
New form DV 14A inserted in Schedule 5

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Rules

- 1 Title**
These rules are the Family Courts Amendment Rules (No 4) 2014.
- 2 Commencement**
These rules come into force on 1 July 2014.
- 3 Principal rules**
These rules amend the Family Courts Rules 2002 (the **principal rules**).
- 4 Rule 5A amended (Limited application of District Court Rules 2009)**
(1) In the heading to rule 5A, replace “**2009**” with “**2014**”.
(2) In rule 5A, replace “2009” with “2014”.
- 5 Rule 8 amended (Interpretation)**
(1) In rule 8, replace the definition of **DCRs** with:
“**DCRs** means the District Courts Rules 2014”.
(2) In rule 8, definition of **without notice**, replace “2009” with “2014”.
(3) In rule 8, replace the definition of **working day** with:
“**working day**, in relation to a court, means a day on which the court office is not closed under DCR 2.1 or 2.3 (and DCR 1.22 applies accordingly).”
(4) In rule 8, insert as subclause (2):
“(2) Wherever the term court office is used in these rules, the term court registry or a similar term may be used instead, whether in forms or other documents used for the purposes of these rules or in proceedings to which these rules apply, or as the case requires, for any other legal purpose.”

6 Rule 43 amended (Appearance under protest to jurisdiction)

- (1) In rule 43(8) replace “HCR 6.27 or HCR 6.28” with “DCR 6.23 or DCR 6.24”.
- (2) In rule 43(8) replace “HCR 6.29 (as applied by rule 130(2)(ba))” with “DCR 6.25 (as applied by rule 130(2)(c))”.
- (3) In rule 43(9) replace “HCR 6.29 (as applied by rule 130(2)(ba))” with “DCR 6.25 (as applied by rule 130(2)(c))”.

7 Rule 47 amended (Getting more information or getting admissions)

In rule 47(1)(a), replace “2009” with “2014”.

8 Rule 62A amended (Approved forms for use in proceedings to which Part 5A applies)

- (1) In rule 62A(1) replace “chief executive of the Ministry of Justice” with “Secretary for Justice”.
- (2) In rule 62A(3) replace “chief executive of the Ministry of Justice” with “Secretary for Justice”.

9 Rule 83A amended (Authority of certain Australian solicitors in certain Trans-Tasman proceedings: District Courts Rules 2009 apply)

- (1) In the heading to rule 83A, replace “2009” with “2014”.
- (2) In rule 83A, replace “DCR 3.37.1A (which applies HCR 5.36A relating to authority of certain Australian solicitors in certain Trans-Tasman proceedings)” with “DCR 5.39 (relating to authority of certain Australian solicitors in certain Trans-Tasman proceedings)”.

10 Rule 98 amended (When further steps to be taken by party and not by representative or manager)

In rule 98(1)(a), replace “20” with “18”.

11 Rule 113 replaced (Personal service: District Courts Rules 2009 apply)

Replace rule 113 with:

“113 Personal service: District Courts Rules 2014 apply

The following DCRs apply, so far as applicable and with all necessary modifications, to proceedings in a court:

- “(a) 6.12—personal service on New Zealand corporations:
- “(b) 6.13—personal service in New Zealand on foreign corporations:
- “(c) 6.14—personal service on Australian corporations, partnerships and attorneys:
- “(d) 6.15—personal service in Australia on foreign corporations:
- “(e) 6.16—personal service on unincorporated societies:
- “(f) 6.17—personal service on partnership or apparent partnership:
- “(g) 6.18—personal service on attorney or agent of absentee.”

12 Rule 130 replaced (Service on absentee: District Courts Rules 2009 apply)

Replace rule 130 with:

“130 Service on absentee: District Courts Rules 2014 apply

- “(1) The DCRs set out in subclause (2) apply, so far as applicable and with all necessary modifications, to proceedings in a court under any of the Acts specified in subclause (3).
- “(2) The DCRs referred to in subclause (1) are—
 - “(a) 6.23—when (service out of New Zealand) allowed without leave:
 - “(b) 6.24—when (service out of New Zealand) allowed with leave:
 - “(c) 6.25—court’s discretion whether to assume jurisdiction:
 - “(d) 6.27—notice to defendant served outside New Zealand:
 - “(e) 6.32—subpart does not apply to service in Australia of documents for or in certain Trans-Tasman proceedings.
- “(3) Without limiting subclause (1), the necessary modifications to DCR 6.25 include that the references in it to DCR 5.51 are to be read as references to rule 43 of these rules (*see*, in particular, rule 43(8) and (9)).
- “(4) The Acts referred to in subclause (1) are the—
 - “(a) Adoption Act 1955:

- “(b) Births, Deaths, Marriages, and Relationships Registration Act 1995:
 - “(c) Child Support Act 1991:
 - “(d) Children, Young Persons, and Their Families Act 1989:
 - “(e) Domestic Actions Act 1975:
 - “(f) Domestic Violence Act 1995:
 - “(g) Family Protection Act 1955:
 - “(h) Law Reform (Testamentary Promises) Act 1949:
 - “(i) Marriage Act 1955:
 - “(j) Property (Relationships) Act 1976:
 - “(k) Protection of Personal and Property Rights Act 1988.
- “(5) DCR 6.30 (relating to service in convention countries) applies, so far as applicable and with all necessary modifications, to proceedings in a court under any of the following Acts:
- “(a) Care of Children Act 2004:
 - “(b) Family Proceedings Act 1980:
 - “(c) those Acts listed in subclause (4)(a), (b), and (d) to (j).”

13 Rule 131 replaced (Māori and other languages: District Courts Rules 2009 apply)

Replace rule 131 with:

“131 Māori and other languages: District Courts Rules 2014 apply

The following DCRs apply, so far as applicable and with all necessary modifications, to proceedings in a court:

- “(a) 1.15—speaking in Māori:
- “(b) 1.16—translation of documents into te reo Māori:
- “(c) 1.17—failure to give notice:
- “(d) 1.18—translation may be ordered by court:
- “(e) 1.20—sign language.”

14 Rule 134 replaced (Change of parties: District Courts Rules 2009 apply)

Replace rule 134 with:

“134 Change of parties: District Courts Rules 2014 apply

- “(1) The following DCRs apply, so far as applicable and with all necessary modifications, to proceedings in a court:
- “(a) 4.49—proceeding not to come to end:
 - “(b) 4.50—procedure on death, bankruptcy, and devolution:

- “(c) 4.51—devolution when proceeding pending:
 - “(d) 4.52—new parties order:
 - “(e) 4.53—discharge or variation of new parties order:
 - “(f) 4.54—change of name.
- “(2) DCR 4.49 applies subject to section 52 of the District Courts Act 1947.”

15 Rule 137 replaced (Interrogatories: District Courts Rules 2009 apply)

Replace rule 137 with:

“137 Interrogatories: District Courts Rules 2014 apply

The following DCRs apply, so far as applicable and with all necessary modifications, to proceedings in a court:

- “(a) 8.12—orders that may be made:
- “(b) 8.34—interrogatories by notice:
- “(c) 8.35—duties of party served:
- “(d) 8.36—limitation of interrogatories by notice:
- “(e) 8.37—multiple parties:
- “(f) 8.38—order to answer:
- “(g) 8.39—contents of statement:
- “(h) 8.40—objection to answer:
- “(i) 8.41—who may swear affidavit verifying statement in answer to interrogatories:
- “(j) 8.42—insufficient answer:
- “(k) 8.43—incorrect answer to be amended:
- “(l) 8.44—answers as evidence.”

16 Rule 171 amended (Evidence by deposition: District Courts Rules 2009 apply)

- (1) In the heading to rule 171, replace “2009” with “2014”.
- (2) Replace rule 171(1) and (2) with:
 - “(1) The following DCRs apply, so far as applicable and with all necessary modifications, to proceedings in a court:
 - “(a) 9.17—order for examination of witness or for letters of request:
 - “(b) 9.20—procedure for examination before examiner:
 - “(c) 9.22—objection to question:
 - “(d) 9.24—depositions as evidence.”

- (3) In rule 171(3), replace “3.24 and 3.25” with “9.17 or 9.20”.

17 Rule 172 amended (Taking evidence outside New Zealand: District Courts Rules 2009 apply)

- (1) In the heading to rule 172, replace “2009” with “2014”.
- (2) Replace rule 172(1) with:
- “(1) The following DCRs apply, so far as applicable and with all necessary modifications:
- “(a) 9.76—authority to take affidavits in places outside New Zealand:
 - “(b) 9.77—meaning of authenticated deposition:
 - “(c) 9.78—admissibility of authenticated deposition.”

18 Rule 173A amended (Leave to serve New Zealand subpoena on witness in Australia: District Courts Rules 2009 apply)

- (1) In the heading to rule 173A replace “2009” with “2014”.
- (2) In rule 173A, replace “DCR 12.4.2A (which applies HCR 9.60 relating to leave to serve a New Zealand subpoena on a witness in Australia)” with “DCR 9.51”.

19 Rule 173CA replaced (Application to set aside New Zealand subpoena)

Replace rule 173CA with:

“173CA Application to set aside New Zealand subpoena

The following DCRs apply, so far as applicable, and with all necessary modifications:

- “(a) 9.53—application to set aside New Zealand subpoena:
- “(b) 9.54—service of documents on applicant:
- “(c) 9.55—hearing of application.”

20 Rule 173E amended (Evidence and submissions by remote appearance medium from Australia: District Courts Rules 2009 apply)

- (1) In the heading to rule 173E, replace “2009” with “2014”.
- (2) In rule 173E, replace “DCR 12.4.5 (which applies HCR 9.67 relating to evidence and submissions by remote appearance medium from Australia)” with “DCR 9.57”.

21 Rule 207 replaced (Costs at discretion of court)

Replace rule 207 with:

“207 Costs at discretion of court

- “(1) The court has discretion to determine the costs of—
- “(a) any proceeding:
 - “(b) any step in a proceeding:
 - “(c) any matter incidental to a proceeding.
- “(2) In exercising that discretion, the court may apply any or all of the following DCRs, so far as applicable and with all necessary modifications:
- “(a) 14.2—principles applying to determination of costs:
 - “(b) 14.3—categorisation of proceedings:
 - “(c) 14.4—appropriate daily recovery rates:
 - “(d) 14.5—determination of reasonable time:
 - “(e) 14.6—increased costs and indemnity costs:
 - “(f) 14.7—refusal of, or reduction in, costs:
 - “(g) 14.8—costs in interlocutory applications:
 - “(h) 14.9—costs may be determined by different Judge:
 - “(i) 14.10—written offers without prejudice except as to costs:
 - “(j) 14.11—effect on costs:
 - “(k) 14.12—disbursements.
- “(3) This rule is subject to the provisions of the family law Act under which the proceedings are brought.”

22 Rule 207B replaced (Security for costs: District Courts Rules 2009 apply)

Replace rule 207B with:

“207B Security for costs: District Courts Rules 2014 apply

The following DCRs apply, so far as applicable and with all necessary modifications, to proceedings in a court:

- “(a) 1.10—security:
- “(b) 5.48—power to make order for security for costs.”

23 Rules 208 to 208B and cross-headings replaced

Replace rules 208 to 208B and the cross-headings above rules 208, 208A, and 208B with:

*“Investment of funds in court***“208 Investment of funds in court**

The following DCRs apply, so far as applicable and with all necessary modifications, to a proceeding in a court:

- “(a) 2.13—application for order:
- “(b) 2.14—powers of court in relation to application:
- “(c) 2.15—disposal of securities and income.

*“Inspection and testing of property***“208A Inspection and testing of property**

The following DCRs apply, so far as applicable and with all necessary modifications, to a proceeding in a court:

- “(a) 9.25—order for inspection, etc:
- “(b) 9.26—notice of application.

*“Interim preservation, etc, of property***“208B Interim preservation, etc, of property**

The following DCRs apply, so far as applicable and with all necessary modifications, to a proceeding in a court:

- “(a) 7.47—preservation of property:
- “(b) 7.48—sale of perishable property before hearing:
- “(c) 7.49—order to transfer part of property to person with interest in property:
- “(d) 7.50—interim payment of income to person with interest in income.”

24 Rule 214 replaced (Contempt of court: District Courts Rules 2009 apply)

Replace rule 214 with:

“214 Contempt of court: District Courts Rules 2014 apply

DCR 21.6 and forms 114 and 115 of the District Courts Rules 2014 (which relate to contempt) apply, so far as applicable and with all necessary modifications, to a proceeding in a court.”

- 25 Rule 270 amended (Order of priority of warrants to seize property)**
In rule 270(4), replace “District Courts Rules 2009” with “District Courts Act 1947”.
- 26 Rule 299 amended (Evidence at hearing of certain proceedings generally to be given orally)**
- (1) In rule 299(3)(b), replace “2009” with “2014”.
 - (2) In rule 299(3)(c), replace “2009” with “2014”.
- 27 Rule 305 amended (Forms)**
Revoke rule 305(2).
- 28 Rule 324 replaced (Enforcement of occupation orders and tenancy orders: District Courts Rules 2009 apply)**
Replace rule 324 with:
“**324 Enforcement of occupation orders and tenancy orders: District Courts Rules 2014 apply**
DCR 19.65 (which relates to warrants to recover land) applies, so far as applicable and with all necessary modifications, to the enforcement of occupation orders and tenancy orders made under the Act.”
- 29 Rule 325 replaced (Enforcement of ancillary furniture orders and furniture orders: District Courts Rules 2009 apply)**
Replace rule 325 with:
“**325 Enforcement of ancillary furniture orders and furniture orders: District Courts Rules 2014 apply**
DCR 19.61 (which relates to warrant for recovery of chattels) applies, so far as applicable and with all necessary modifications, to the enforcement of ancillary furniture orders and furniture orders made under the Act.”
- 30 Rule 374 amended (Order of priority of warrants to seize property)**
In rule 374(4) replace “District Courts Rules 2009” with “District Courts Act 1947”.

- 31 Rule 419 amended (Sittings when court office closed)**
In rule 419(5), replace “DCRs 1.19 and 1.21” with “DCRs 2.1 and 2.3”.
- 32 Rule 427 amended (Access to documents and court files during first access period)**
In rule 427(3), replace “subclause (2)” with “subclause (2)(a) to (c)”.
- 33 Rule 428 replaced (Access to documents and court files during second access period)**
Replace rule 428 with:
- “428 Access to documents and court files during second access period**
During the second access period—
- “(a) a party to a proceeding—
 - “(i) is entitled to have access to an order made in the proceeding by a Judge or Registrar; and
 - “(ii) may apply to the court under rule 429 for permission to access any other document or the court file; and
 - “(b) any other person may apply to the court under rule 429 for permission to access a document or the court file.”
- 34 Rule 429 amended (Application for permission to access documents or court files)**
Replace rule 429(1) with:
- “(1) Any person may apply to the court for permission to access a document or court file—
- “(a) during the first access period; or
 - “(b) during the second access period.”
- 35 Schedule 5 amended**
In Schedule 5, after form DV 14, insert the form DV 14A set out in the Schedule of these rules.

36 Schedule 10 amended

In Schedule 10, form COC 6, authorisation, delete “; *Section 28B, Domestic Violence Act 1995*”.

Schedule

r 35

New form DV 14A inserted in Schedule 5

Form DV 14A

r 305

Interim parenting order

Section 28B, Domestic Violence Act 1995

(General heading—Form G 2)

The court orders that—

- (a) the following person has/people have* the role of providing day-to-day care of the child(ren) listed below, during the times stated: *[for each child specify the full name of the person having the role of providing day-to-day care of the child and, if more than 1 person has that role, specify the full name of each person and when each person has that role]*:

*Select one.

- (b) the following person has/people have* contact with the child(ren) listed below, during the times and in the ways stated: *[for each child specify the full name of the person having contact with the child, when that person has contact, and how that contact is to occur (for example, face-to-face contact, letters, telephone, email, supervised by a person other than an approved provider). If more than 1 person has contact with the child, specify this information for each person]*.

*Select one.

Effect of interim parenting order

While exercising the role of providing day-to-day care for a child, you have exclusive responsibility for the child's day-to-day living arrangements, subject to—

- any court order:
- any conditions stated below.

Form DV 14A—*continued****Conditions**

The court imposes the following conditions: [*specify any conditions to which the interim parenting order is subject that have been imposed by the court*].

*Omit this paragraph if it does not apply.

Duration of interim parenting order

Unless the court orders otherwise, this order continues in effect until the earliest of the following:

- [*state specific date that is 1 year after the date the order was made*];
- until it is replaced by another order;
- until the child attains the age of 16 years.

Application to be made under Care of Children Act 2004

If under this order you have either the role of providing day-to-day care for a child, or contact with a child, you must as soon as possible make an application under the Care of Children Act 2004 for a parenting order.

However, you do not need to make an application if some other person has already made an application under the Care of Children Act 2004 in respect of the child and that application has not been determined.

Consequences of non-compliance

You must comply with the conditions of this parenting order. If you do not, another party may apply to the court to enforce the order. The Family Court may choose from a variety of tools to remedy the non-compliance. For example, you may be required to pay a bond to ensure you do not contravene the parenting order again, or to meet the reasonable costs incurred by the other party because of your contravention. The court may admonish you, or vary the order, for example, by reducing the amount of time you have with the child. The court takes non-compliance very seriously.

Form DV 14A—*continued*

It is also an offence, without reasonable excuse and with the intention of preventing compliance with a parenting order, to contravene a parenting order. The penalty for this offence is imprisonment for a term not exceeding 3 months or a fine not exceeding \$2,500.

Michael Webster,
Clerk of the Executive Council.

Explanatory note

This note is not part of the rules, but is intended to indicate their general effect.

These rules, which come into force on 1 July 2014, amend the Family Courts Rules 2002 (the **principal rules**).

These rules update those rules that apply provisions of the District Courts Rules 2009 to take account of the replacement District Courts Rules 2014. *Rules 32 to 34* make changes to rules 427 to 429 of the principal rules (which deal with access to court documents and court files) in order to correct errors in, and clarify the application of, those rules. *Rule 35* inserts a new form for interim parenting orders in Schedule 5 of the principal rules.

Issued under the authority of the Legislation Act 2012.

Date of notification in *Gazette*: 29 May 2014.

These rules are administered by the Ministry of Justice.
